



**U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED 11-3-78

RE: AJA SHEEP COMPANY & WESTERN RANGE ASSOC.
CASE NO. 79-TLC-2

THIS MATTER IS ON APPEAL BY THE ABOVE NAMED EMPLOYERS OF A DENIAL OF TEMPORARY LABOR CERTIFICATION BY THE REGIONAL ADMINISTRATOR (RA), DATED NOVEMBER 17, 1978.

APPEAL WAS RECEIVED ON NOVEMBER 27, 1978, AND THE PERTINENT CASE FILE WAS RECEIVED IN THIS OFFICE ON NOVEMBER 28, 1978.

EMPLOYER FILED A TEMPORARY LABOR CERTIFICATION APPLICATION FOR TWO SHEEPHERDERS CERTIFICATION WAS DENIED BASED ON THE RA'S FINDING THAT "THE APPLICATIONS DO NOT SHOW THAT WORKERS ARE PROVIDED WITH HOUSING THAT MEETS EITHER THE FULL SET OF DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION STANDARDS SET FORTH AT 29 CFR 1910.142 OR THE FULL SET OF STANDARDS OF 20 CFR 620 IF APPLICABLE. REGULATIONS AT 20 CFR 655.202(b)(1) REQUIRE THE JOB OFFER TO SHOW THAT SUCH HOUSING IS FURNISHED TO WORKERS." THIS CONCLUSION IS NOT CORRECT BECAUSE §655.202(b)(1) GOES ON TO PROVIDE AN EXCEPTION WHICH CLEARLY APPLIES TO THIS CASE, STATING THAT "RANGE HOUSING FOR SHEEPHERDERS SHALL MEET GUIDELINES WHICH SHALL BE ISSUED PERIODICALLY BY THE DEPARTMENT."

THE ASSURANCES GIVEN BY THE EMPLOYER CONTAIN AN AGREEMENT TO PROVIDE HOUSING IN ACCORDANCE WITH 5655.202 WHICH IN THIS CASE REQUIRES COMPLIANCE WITH THE SPECIAL PROVISION FOR SHEEPHERDERS.

ACCORDINGLY, THE RA'S DECISION OF NOVEMBER 17, 1978 IS MODIFIED AS FOLLOWS:

1. THE DENIAL OF THE APPLICATIONS IS SET ASIDE;
2. THE RA SHALL DETERMINE WHETHER THE APPLICATION SHOULD BE DENIED UNDER §655.204 FOR FAILURE TO COMPLY WITH THE EXCEPTION IN

§655.202 (b)(1);

3. IF THE RA DETERMINES THAT THERE IS SUCH NONCOMPLIANCE AND HE AGAIN DETERMINES THAT IT WOULD BE APPROPRIATE TO ALLOW THE DEFECT TO BE REMEDIED, HE SHALL WITHHOLD DENIAL UNTIL A REASONABLE OPPORTUNITY TO TAKE APPROPRIATE CORRECTIVE ACTION HAS BEEN PROVIDED;

4. IF THE RA ISSUES A FURTHER DENIAL FOR FAILURE TO COMPLY WITH HOUSING STANDARDS, SUCH DENIAL SHALL SPECIFICALLY IDENTIFY THE STANDARDS IN QUESTION: AND

5. IF THE RA DETERMINES THAT THE APPLICATION SHOULD NOT BE DENIED UNDER §655.204, HE SHALL PROCEED TO MAKE THE DETERMINATIONS REQUIRED BY §655.205 AND 206. IN THESE CIRCUMSTANCES THE RA SHOULD WAIVE THE 60-DAY RECRUITMENT PERIOD IN ACCORDANCE WITH §655.201(e).

THIS DECISION IS BEING TRANSMITTED TO BOB LANG, WESTERN RANGE ASSOC., THE REGIONAL ADMINISTRATOR, THE ADMINISTRATOR OF THE U.S. EMPLOYMENT SERVICE, THE ASSOCIATE SOLICITOR FOR EMPLOYMENT AND TRAINING AND THE DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE.

ERIC FEIRTAG
HEARING OFFICER
U.S. DEPARTMENT OF LABOR